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August 24, 2015

Mr. Gerard Poliquin,
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

RE: Comments on Proposed Rulemaking for Member Business Loans, Part 723.

Dear Mr. Poliquin:

I am writing to the National Credit Union Administration today to urge you to withdraw the proposal to "modernize" the NCUA's member business lending regulation.

In the name of regulatory relief, the NCUA is expanding the ability of credit unions to make commercial loans in ways that were never approved by Congress. Despite attempts to pass legislation increasing credit unions' commercial lending authority, Congress has repeatedly rejected those attempts because additional commercial lending authority is inconsistent with the credit unions' tax exempt mission. The NCUA should not grant powers that Congress has regularly rejected.

There are serious doubts about whether the typical credit union has the expertise to expand their commercial lending operations, either by originating more commercial loans or by purchasing participations. Credit union delinquency rates are much higher for these loans than for other types of loans. Giving the credit unions additional commercial lending authority now, and hoping that they learn how to safely and soundly make those loans as they go, is a reckless strategy.

The NCUA admits that it not prepared to regulate the credit unions if they make a significantly higher number of commercial loans. The NCUA will spend millions of dollars training examiners to regulate credit unions making commercial loans. Since the NCUA is not prepared for this type of expansion of commercial lending, the NCUA should abandon this plan and keep the credit unions focused on their real mission, serving people of modest means.

The Treasury Department recently concluded that the NCUA has done a poor job enforcing Bank Secrecy Act (BSA) regulations. The NCUA has admitted that it is not prepared to regulate the credit unions if they make a significantly higher number of commercial loans. The NCUA plans to spend millions of dollars training examiners to conduct the more complex commercial loan reviews. Perhaps the NCUA should abandon this expansion and spend those millions of dollars training their examiners to enforce the BSA regulations. The NCUA should fix its existing regulatory oversight issue before adding a second one.

Credit unions receive extremely generous tax advantages, and in exchange for those advantages, credit unions have some limitations. For example, Congress set a cap for credit union commercial lending at 12.25% of total assets. Through various regulatory actions, the NCUA has created multiple exceptions to that rule, rendering the cap meaningless. In this proposed regulation the NCUA has decreed that non-member business loans and non-member commercial participations are exempt from the cap. Congress did not determine that these loans should not count against that cap. That part of the proposed rule is inappropriate. Making that kind of policy determination is a legislative function for Congress, not a regulatory function.

Credit unions are membership-based organizations. They should focus on serving the needs of their individual members, and especially on individuals of modest means. This proposal gives credit unions the explicit authority to make non-member business loans. Why should credit unions be able to serve anyone outside their defined membership? That makes no sense for a membership-based organization. It is especially egregious that credit unions would have the authority to serve business entities that have no affiliation with the credit union. Not only can they serve them, the loans to these unaffiliated businesses do not even count toward the credit unions' Congressionally-mandated business lending cap. NCUA, with this proposal, you have gone too far.

This proposal is contrary to congressional intent to limit credit union business lending activity. In 1998, Congress instituted the credit union commercial lending cap, making it clear that credit unions should be focused on consumer lending, not commercial lending. The cap was put in place "to ensure that credit unions continue to fulfill their specified mission of meeting the credit and savings needs of consumers, especially persons of modest means, through an emphasis on consumer rather than business loans." By proposing this rule, the NCUA Board has disregarded Congress's clear intent.

Credit unions receive tax and regulatory advantages because they once served "people of modest means." If the benefit of tax-advantaged credit is supposed to support low- and moderate-income individuals, why would the NCUA continue expanding lending opportunities to commercial entities? Instead, the NCUA should work to ensure that credit union branching patterns, product offerings and advertisements support their tax exempt mission of serving low- and moderate-income people. The taxpayers subsidizing the credit union industry should get a better return on their subsidy. Giving tax-advantaged credit to corporations is poor public policy, which is why Congress repeatedly denied the credit union industry's requests.

Commercial lending is more complicated and requires a different skillset than consumer lending. The credit union industry has not shown that they have the requisite skills. Several different credit unions failed because of poor performance within their commercial lending portfolios. The NCUA should not be encouraging further credit union commercial lending expansion until the industry proves it has mastered that type of lending.

The NCUA has been criticized for being a "cheerleader" for the credit union industry rather than a regulator. Actions like this proposal show why you have earned that reputation. This proposal is clearly about giving the credit unions what they want so that they can continue their rapid growth, rather than ensuring that the credit unions focus on their real mission.

Over time, some credit unions have remained true to the original credit union model. They continue to have a tight common bond, and they continue to focus on serving the credit needs of individuals, and especially people of modest means. Other credit unions have become massive institutions serving wealthy people and corporations. Instead of limiting these non-traditional credit unions, the NCUA rewards them by giving them the additional authorities they want and by requiring no accountability with respect to their "common bond" and their true tax-exempt mission. This proposal proves why the NCUA was rightfully called a "cheerleader" for the credit union industry.

Every credit union continues to enjoy their tax exemptions, even though many of them are no longer true to the original credit union mission. There are many examples, but the California credit union that recently committed to paying $120 million for the naming rights on a professional basketball arena is a great example of how the credit unions abuse their tax advantages. If the NCUA were a true regulator, rather than a "cheerleader" for the credit union industry, it would reign in these types of excesses.

Thank you for your consideration in this matter.

Sincerely,

Jeffrey Browne
Executive Vice President